

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**WSOU INVESTMENTS, LLC d/b/a  
BRAZOS LICENSING AND  
DEVELOPMENT,**

*Plaintiff,*

**v.**

**DELL TECHNOLOGIES INC.,  
DELL INC., EMC CORPORATION,  
AND VMWARE, INC.,**

*Defendants.*

Civil Action No.: 6:20-cv-00480-ADA-DTG  
Civil Action No.: 6:20-cv-00481-ADA-DTG  
Civil Action No.: 6:20-cv-00486-ADA-DTG

**JURY TRIAL DEMANDED**

**PUBLIC VERSION**

**PLAINTIFF’S OBJECTIONS TO AND APPEAL FROM MAGISTRATE  
JUDGE’S REPORT AND RECOMMENDATION GRANTING IN PART  
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT OF  
NON-INFRINGEMENT OF U.S. PATENT 7,092,360**

Plaintiff respectfully objects to and appeals Magistrate Judge Gilliland’s Report and Recommendation (“R&R”) granting in part Defendants’ Motion for Summary Judgment of Non-Infringement of U.S. Patent 7,092,360 (the “Motion”), as it contains erroneous findings of fact and contradicts the pertinent law and procedures.<sup>1</sup> *See, e.g., Baylor Health Care Sys. v. Equitable Plan Servs.*, 955 F. Supp. 2d 678, 689 (N.D. Tex. 2013); *see also* Fed. R. Civ. P. 72(a) (“The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.”).

**A. There is a Genuine Issue of Material Fact Regarding Whether** [REDACTED]

The R&R is incorrect, as Dr. McClellan clearly [REDACTED]

[REDACTED]

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<sup>1</sup> The Court heard Defendants’ Motion on the papers, and there were no findings of fact on the record.

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[REDACTED]

[REDACTED] Therefore, Defendants’ contention that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dr. McClellan also identified [REDACTED]

[REDACTED]

[REDACTED]

Further, Dr. McClellan identified v [REDACTED]

[REDACTED] Dr. McClellan explained, [REDACTED]

[REDACTED]

[REDACTED]

Dr. McClellan also explained [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As another example, Dr. McClellan identified [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dr. McClellan also explained [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] Thus, there is a material issue of fact, and Defendants’ Motion should have been denied.

**B. There is a Genuine Dispute of Material Fact as to Whether [REDACTED]**

The Court erroneously found that Brazos failed to show that [REDACTED]

[REDACTED] However, Dr. McClellan identified [REDACTED]

[REDACTED] Dr. McClellan also identifies [REDACTED]

[REDACTED] Thus, there is a

material issue of fact.

For these reasons, Plaintiff respectfully requests that this Court sustain Plaintiff’s objections and vacate Magistrate Judge Gilliland’s Report and Recommendation granting in part Defendants’ Motion for Summary Judgment of Non-Infringement of U.S. Patent 7,092,360.

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Dated: February 13, 2023

RESPECTFULLY SUBMITTED,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served or delivered electronically via email to all counsel of record, on this 13th day of February, 2023.

/s/ Jonathan K. Waldrop  
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